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December 11, 1989

RECORDATION NO 16647 FILED 1425

DEC 11 1989 -12 50 PM

INTERSTATE COMMERCE COMMISSION

The Honorable Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Secretary McGee:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303(a) and the regulations thereunder, are an original and five counterparts of a Demonstration Lease Agreement, dated as of December 7, 1989, between General Electric Company ("Lessor"), and Burlington Northern Railroad Company ("Lessee"), a primary document.

The names and addresses of the parties to the enclosed Demonstration Lease Agreement are as follows:

LESSOR: General Electric Company  
2901 East Lake Road  
Erie, Pennsylvania 16531

LESSEE: Burlington Northern Railroad Company  
9401 Indian Creek Parkway  
P.O. Box 29136  
Overland Park, Kansas 66201-9136

A general description of the railroad locomotives covered by the enclosed documents is attached hereto as Schedule I.

The undersigned is the attorney-in-fact of General Electric Company. Please return the original of the enclosed document to John K. Maser III, Esquire, Donelan, Cleary, Wood & Maser, P.C., Suite 850, 1275 K Street, N.W., Washington, D.C. 20005-4006 or to the bearer hereto.

Letter to Secretary McGee  
Page 2  
December 11, 1989

Also enclosed is a remittance in the amount of \$15.00 for the required recording fee.

A short summary of the document to appear in the index follows:

PRIMARY DOCUMENT

Demonstration Lease Agreement, dated as of December 7, 1989, between General Electric Company ("Lessor") and Burlington Northern Railroad Company ("Lessee"), relating to two (2) General Electric Super 7 B23 Diesel Electric Locomotives, bearing identification marks "GECX" and Road Nos. 2000 and 2002.

Respectfully submitted,

By:



John K. Maser III  
Attorney-In-Fact

004/FS  
Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

12/11/89

OFFICE OF THE SECRETARY

John K, Maser III  
Donelan, Cleary, Wood & Maser  
1275 K. st. N.W.  
Washington, D.C. 20005

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **12/11/89** at **12:50pm** and assigned recordation number(s) **16647**

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

DEC 11 1989 -12 50 PM

## Demonstration Lease Agreement

INTERSTATE COMMERCE COMMISSION

This Agreement, made and entered into as of this 7<sup>th</sup> day of December, 1989, by and between General Electric Company (hereinafter called "GE") and the Burlington Northern Railroad Company (hereinafter called "Lessee").

GE and Lessee agree to the following:

1. Locomotives to be Leased and Period of Lease - GE will furnish and Lessee will use the following locomotives (hereinafter called "Locomotives"):

<u>Model</u>	<u>Road Number</u>	<u>Casualty Value</u>
"Super 7" B23	GECX 2000	\$845,000
"Super 7" B23	GECX 2002	\$845,000

Said Locomotives are anticipated to be delivered to Lessee as a pair of two (2) units on or about November 15, 1989. Lessee shall have use of said Locomotives for a period of thirty (30) days following receipt of said Locomotives.

2. Rental Payments - Lessee will pay to GE, as rent for each of the Locomotives, the sum of \$1.00, during the term of the Lease.

3. Delivery and Return Points - Lessee and GE will perform a joint mechanical inspection of the Locomotives and if said Locomotives are in good repair and operating condition, Lessee will accept delivery of Locomotives at any interchange point on Lessee's railroad system. Upon end of the Lease, Lessee and GE will perform a joint mechanical inspection of the Locomotives and Lessee will deliver the Locomotives to the Chicago Central and Pacific Railroad at an interchange point on Lessee's railroad system, at no charge to GE.

4. Registration of Lease - Lessee will assist General Electric in duly filing, registering or recording Lease in conformity with Section 11303 of the Interstate Commerce Act for the protection of General Electric's title to the Locomotives.

5. Other Terms and Conditions - This agreement is governed by terms and conditions listed in "Appendix 1. Demonstration Lease Terms and Conditions" (attached).

This Lease contains the entire and only agreement between the parties concerning the subject matter hereof, and any representation, promise or condition not incorporated herein shall not be binding on either party. No modification, renewal, extension, termination, or waiver of this Lease or any of the provisions herein contained shall be binding upon either party unless made in writing by a duly authorized representative of each party.

Lessee:

Edward L Bauer Jr.

Title: System Chief Mech Officer

Date: 11/8/89

GE:

JR Malone

Title: Mgr. Mkt & Sales-GE

Date: 12/8/89

## Appendix 1. DEMONSTRATION LEASE TERMS AND CONDITIONS

### 1. Warranties and Liabilities:

- a. GE makes NO WARRANTIES, WHETHER EXPRESS, IMPLIED, ORAL, WRITTEN, OR STATUTORY, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, concerning Locomotives supplied to Lessee LESSEE SHALL ACCEPT EACH LOCOMOTIVE AS IS AND WITH ALL FAULTS
- b. Whether liability is based on contract, warranty, tort (including negligence), or otherwise, (i) GE shall have no liability to Lessee arising out of furnishing or use of any Locomotive under this Lease, or their use, (ii) in no case, shall GE's liability include any special, incidental, indirect, or consequential damages including, but not limited to, loss of revenue or profits, damage to freight, loss of use of any equipment, cost of capital, downtime costs, or claims of Lessee's customers for such damages
- c. Lessee shall indemnify, reimburse, and hold GE harmless from any and all losses, damages, costs, injuries, claims, demands, suits, judgments, or causes of action whatsoever arising on account of, or caused in any way by the Locomotives or the use or operation thereof, except to the extent directly caused by the negligence of GE.

### 2. Title, Assignment, Taxes, and Liens

- a. At all times during this Lease, title to the Locomotives shall remain with GE. Delivery of the Locomotives to Lessee shall constitute a lending or bailment for hire. No right, title, or interest in the Locomotives will vest in Lessee by reason of this Lease or by reason of the delivery to or use by Lessee of the Locomotives, except the right to use the Locomotives in accordance with the terms of this Lease. Lessee will take all actions necessary to protect GE's rights, interest, and title in the Locomotives. Locomotives shall be marked on each side. "General Electric Company, Owner, Lessor, Lease Filed with ICC" Lessee shall maintain this marking, and immediately replace it if such marking is destroyed. Lessee shall not make any markings on the locomotives that might be interpreted as a claim of ownership
- b. Lessee agrees to use the Locomotives exclusively within its own service including run-through arrangements that are part of Lessee's normal business. Lessee agrees to use the Locomotives within the boundaries of the United States. Lessee shall not assign, transfer or encumber this Lease or any interest therein or any right granted hereunder without prior written consent of GE
- c. Lessee shall pay and discharge any debt, tax, charge, assessment, obligation, or claim against the Lessee or Locomotive(s) which, if unpaid, might become a lien or charge upon or against the title of GE to the Locomotives or which might have the effect of altering in any way the rights of GE in such Locomotives under this Lease
- d. Lessee shall be responsible for any taxes and fees arising from the use or operation of the Locomotives.

### 3. Risk of Loss and Damage

- a. Lessee shall bear the risk of loss or damage to any Locomotive from the date of delivery through return of the Locomotive by Lessee to GE, regardless of the cause of such loss or damage (including any damages caused by improper use, operation, or maintenance of the Locomotives), except to the extent such loss or damage is caused directly by the negligence of GE.
- b. In the event of any loss or damage to any Locomotive, Lessee shall immediately notify GE. In the event that Locomotives are lost or damaged beyond repair, Lessee shall pay to GE the casualty value of such Locomotive within thirty days and Lessee shall receive title to the damaged Locomotives at the time when casualty value payment is made. If Locomotives are partly damaged, GE will, at its sole discretion, determine how repairs are to be made and Lessee shall repair the Locomotives. In such cases, Lessee will be responsible for the reasonable cost of such repairs, but shall not be required to make such repairs when the cost thereof would exceed casualty value of Locomotive. In the event that damage is limited to a component of the Locomotive costing less than \$500, Lessee may replace such component with a component of equivalent quality and value, without notifying GE
- c. Lessee shall, at all times, at its own expense, cause to be carried and maintained with respect to liabilities assumed by Lessee under this Lease (i) all risk insurance on Locomotives and (ii) public liability insurance with respect to third party personal injury and property damage, in such amounts and against such risks and with such insurance companies as is consistent with prudent railroad industry practices, provided, however, that if Lessee customarily self-insures against such risks, Lessee may self-insure to the extent that such self-insurance is consistent with prudent railroad industry practices
- d. Lessee shall continue to be responsible for any amounts due under this section notwithstanding any termination of this Lease

### 4. Use, Alterations, and Maintenance

- a. Lessee will use and operate the Locomotives in conformance with all applicable manufacturer recommendations. Lessee shall keep the Locomotives in good repair and operating condition (reasonable wear and tear excepted), applying the manufacturer's recommended maintenance standards and procedures
- b. During the term of the Lease, Lessee assumes all operating and maintenance expenses of the Locomotives including the costs of fuel, lubricating oils, greases, and other supplies necessary for the proper operation of the Locomotives. These supplies must conform with GE's specifications. Lessee shall not be responsible for any costs of repairing any components of the Locomotives which may fail due to no fault of the Lessee. If such failures occur at no fault of Lessee, at Lessee's option, Lessee's employees could correct such failures under GE supervision, or Lease could be terminated and the Locomotive returned to GE for repairs
- c. Lessee shall not make changes to the design, construction, or specifications of the Locomotives, body or electrical equipment, components thereof, or markings without the prior authority and approval of GE. If any alterations or changes to the Locomotives are required by law or regulatory authority, said alterations or changes shall be the responsibility and at the expense of GE
- d. Lessee shall allow GE to inspect and observe the operation of the Locomotives at any reasonable time and location on Lessee's property.

### 5. Default and Remedies

- a. If Lessee breaches or is in default of any material provision of this Lease, GE, at its option, may, without prejudice to any other rights or remedies it may have under this Lease, at law or in equity, (a) terminate this Lease and take immediate possession of the Locomotives, and (b) proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable terms and conditions of this Lease or to recover damages for breach thereof
- b. The remedies and powers in this Lease provided in favor of GE shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies and powers in its favor existing at law or in equity and each and every remedy and power may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by GE

### 6. Applicable Law - Except insofar as Federal law may be applicable, the terms and conditions of this instrument and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania (including but not limited to the Uniform Obligations Act), but GE shall be entitled to such additional rights arising out of the filing or recording hereof, as shall be conferred by the laws of any jurisdiction in which the Lease or any such assignment shall be filed or recorded.

STATE OF Kansas  
COUNTY OF Johnson

On this 8th day of November, 1989, before me personally appeared EDWARD L. BAUER, JR to me personally known, who, being by me duly sworn, did say that he is SYSTEM CHIEF Mechanical Officer of Burlington Northern, that the instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Guy R. Glover  
Notary Public

My commission expires:

Jan 18, 1992

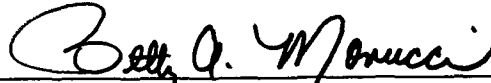


COMMONWEALTH OF PENNSYLVANIA

COUNTY OF ERIE

)  
: SS.  
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On this 8 day of DECEMBER, 1989, before me personally appeared J.R.Malone, to me personally known, who, being by me duly sworn, did say that he is Manager of Locomotive Sales of General Electric Company, that the instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



Notary Public

My commission expires:

NOTARIAL SEAL  
BETTY A. MANUCCI, NOTARY PUBLIC  
LAWRENCE PARK TWP., ERIE COUNTY  
MY COMMISSION EXPIRES JAN 14, 1991

Member, Pennsylvania Association of Notaries